Supreme Court, U.S.
FILED
JUN 10 1993
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92-1968

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1992

CORDELIA ANN BODIE,

PETITIONER

v.

CITY OF HUNTSVILLE, et al.,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Cordelia Ann Bodie
Petitioner pro se

1128 Hermitage Ave SE
Huntsville, AL 35801
(205) 536-5383

34 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether a vague "heightened Rule 8" pleading requirement -- selectively applied to civil rights and conspiracy actions -- is a legally permissible ground for dismissal of a civil rights action brought under Title 42, U.S.C. Section 1983?

II. Whether a vague "meritorious claim" pleading requirement -- selectively applied to Section 1983 actions -- is a legally permissible ground for dismissal of a civil rights action as "patently frivolous"?

III. Whether pre-trial statement of the "law of the circuit" is a legally sufficient ground to support the "prevailing party" status of civil rights defendants?

PARTIES TO THIS ACTION, INCLUDING PARENT COMPANIES and SUBSIDIARIES [1]

---

1. Petitioner,
Cordelia Ann Bodie, former City Nurse.

v.

Respondents,
City of Huntsville, Alabama,
a municipal government;
Wikle-Thornton-Holcombe & Assoc., Inc.,
Insurance Agency, an Alabama corporation and current division of J. Smith Lanier & Co., Insurance Brokers;
The Healthcare Authority of the City of Huntsville, dba Huntsville Hospital,
a municipal healthcare authority;
Ernest Kaufmann, former President of Huntsville City Council;
Bill Kling, member of City Council;
James Putnam, member of City Council;
Richard Showers, member of City Council;
James Wall, Jr., member of City Council;
Steve Hettinger, Mayor;
Richard Liles, Adm. Asst. to the Mayor;
Errol Fitzpatrick, City Risk Manager;
Larry Hall, City Personnel Director,
until on or about April 1, 1989;
Charles Perry, City Personnel Director,
since on or about April 1, 1989;
James D. Thornton, III., an independent insurance agent, principal in Wikle-Thornton-Holcombe & Assoc., Inc., and authorized representative for St. Paul Fire & Marine Insurance Co.; and
Jeff Hamilton, an agent and employee of Huntsville Hospital.

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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

CORDELIA ANN BODIE, PETITIONER

v.

CITY OF HUNTSVILLE, et al., RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Petitioner Bodie respectfully prays that a writ of certiorari issue to review the order, opinion, and judgment of the United States Court of Appeals for the Eleventh Circuit applying rules of law as rules of pleading and practice to affirm the private dismissal of a civil rights action and tax costs against a plaintiff.

OPINIONS BELOW

The order of the Court of Appeals is reported in Bodie v. City of Huntsville, 978 F.2d 774 (Table), and the unpublished opinion is set out in Appendix A to this Petition. The judgment of the Court of of Appeals is set out in Appendix B. The unpublished opinion and order of the District Court for the Northern District of Alabama, is set out in Appendix C.

JURISDICTION

The Court of Appeals' order and opinion in this action was filed on March 3, 1993. Timely Petition for Rehearing was filed on March 22, 1993. The Court of Appeals' Denial of Petition for Rehearing was issued on April 12, 1993, and is set out in Appendix D. The jurisdiction of this Court is granted by Title 28, U.S.C.

Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment I. to the United States Constitution, provides in pertinent part:

> Congress shall make no law . . . abridging the freedom of speech, . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV. to the United States Constitution, provides in pertinent part:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42, U.S.C. Section 1983 (1979), provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of

> the United States . . . to the deprivation of any right, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . for redress.

Title 28, U.S.C. Section 2071 (1988), provides in pertinent part:

> (a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

Title 28, U.S.C. Section 2072 (1988), provides in pertinent part:

> (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure . . . for cases in the United States district courts . . . and courts of appeals.
>
> (b) Such rules shall not abridge . . . any substantive right. All laws in conflict with such rules shall be of no further force or effect . . . .

STATEMENT OF THE CASE

On January 10, 1992, through counsel, Bodie filed suit in the United States District Court for the Northern District of Alabama, Northeastern Division, to recover damages for violation of rights secured by the First and Fourteenth Amendments to the United States Constitution. (R1-1) Prior to responsive pleading or motion, an amended complaint, as a substitute for the original complaint, was filed on February 3, 1992. (R1-3-2)

The complaint alleges, in sum:

General Allegations.

Jurisdiction granted by Title 28, U.S.C. Section 1343(a)(3), for action brought under Title 42, U.S.C. Section 1983; Bodie, a registered nurse, was employed as City Nurse for the City of Huntsville, Alabama, from May 1976 through July 1990;

each defendant's corporate affiliation and position; each defendant acted in both representative capacity and individually; and some specific incidents in the pattern of deliberate conduct which created constructive discharge. [2]

Count I.

Defendant City employees and officials and non-City parties, under color of law,

---

2. General Allegations include: the City was added, by a covert endorsement signed by Thornton, as an insured on her personal $4 million professional liability insurance policy; November 1987, upon discovery and refusal to consent to City encroachment, she was threatened by Fitzpatrick and Hall -- insure City or lose job; subsequent deterioration of Clinic work place safety and sanitation; October 1988, she filed a grievance as to unsafe work conditions; January 11, 1990, City Council disposed of said grievance by voting to transfer her to "jail nurse" -- working under the "overall management" of Huntsville Hospital; May 15, 1990, a job description presented by Perry, effective upon imminent transfer to jail, required her to perform acts in violation of state law -- Bodie felt compelled to, and did, resign. (R1-3-2,3,4,5,6,7,8,9)

conspired, acted in concert, and constructively deprived Bodie of her City employment, without due process of law, in violation of the Fourteenth Amendment . . . demand for relief [3]. (R1-3-9);

Count II.

Defendant City employees and officials and non-City parties, under color of law, conspired, acted in concert, and constructively deprived Bodie of her City employment, by denying her a reasonably safe work place, required by state law and provided to other City employees, in violation of the equal protection of laws guarantee of the Fourteenth Amendment . . . demand for relief. (R1-13-10);

Count III.

---

3. Same demand for Counts I, II, and III -- compensatory and punitive damages, in an amount to be determined at trial; special damages are specifically stated; complaint demands trial by jury. (R1-3)

Defendant City Council members and City employees, under color of law, conspired, acted in concert, and compelled Bodie to leave her City employment, in retaliation for pursuit of her employee grievance, in violation of the free speech and petition guarantee of the First Amendment . . . demand for relief. (R1-3-11); and

Count IV. [4]

All Defendants filed motions to dismiss, (R1-4,5,7,8,10), and the District Court ordered briefs and motion docket. (R1-9,11) After briefs were submitted, the motion docket was rescheduled as a Rule 16(b) pre-trial planning conference. At said conference, motion for leave to amend, with attached second amended com-

---

4. Count IV. (R1-3-12), argument for an extension of law to include Article I., Section 10, of the Constitution within the protection of the Fourteenth Amendment, has not been appealed pro se.

plaint, was proffered to Judge Nelson and served on opposing counsel. (R1-12) [5]

On April 22, 1992, holding that "the plaintiff . . . fails to allege any violation of any federally protected right," the District Court granted the motions to dismiss, and taxed costs against Bodie. (R1-13-2) All defendants filed motions for attorney's fees (R1-14,15,16,17,18), and Bodie filed a timely, pro se, notice of appeal on May 15, 1992. (R1-19)

On March 3, 1993, the Eleventh Circuit, stating they had consistently held that "[i]n civil rights and conspiracy actions, . . . more than mere conclusory, notice pleading is required," affirmed the private dismissal of this action and taxed additional costs against Bodie.

---

5. All defendants aver, in Appellee briefs, leave to amend was not granted, and express leave is not in the record.

A timely Petition for Rehearing, filed on March 22, 1993, was Denied by the Court of Appeals on April 12, 1993.

REASONS FOR GRANTING WRIT OF CERTIORARI

Writ of Certiorari should be granted for three important reasons: The "law of the circuit" -- "heightened Rule 8" and "meritorious claim" pleading requirements for civil rights and conspiracy actions, and private pre-trial prevailing party award for purposes of taxing costs -- applied as the rules of practice and procedure by the Eleventh Circuit:

1. conflict with the Congressional mandates of the Rules Enabling Act;

2. conflict with applicable decisions of this Court; and

3. project the appearance of bias favoring civil rights defendants.

The Rules Enabling Act, Title 28, U.S.C. Sections 2071, 2072, provides, in relevant part, that federal courts may prescribe rules to govern their business, within limitations imposed by said Act -- Rules shall be consistent with

1. Acts of Congress, section 2071(a), including Title 28, U.S.C. Federal Rules of Civil Procedure, Rule 1 ("These rules govern the procedure in the United States district courts . . . [t]hey shall be construed to secure the just . . . determination of every action."); and

2. Supreme Court decisions prescribing "general rules of practice and procedure," section 2072(a); and

3. "All laws in conflict with such rules shall be of no further force or effect . . . ." section 2072(b).

A. "Heightened Rule 8"

The opinions below both cite the Eleventh Circuit decision holding that: "[i]n civil rights and conspiracy actions, . . . more than mere conclusory notice pleading is required." Fullman v. Graddick, 739 F.2d 553, 556 (11th Cir. 1984). The Court of Appeals' opinion further cites their decision holding that: "[i]n pleading a section 1983 action . . . this heightened Rule 8 requirement -- as the law of the circuit -- must be applied by the district courts; . . . ." Oladeinde v. City of Birmingham, 963 F.2d 1481, 1485 (11th Cir. 1992).

Since this "heightened Rule 8" requirement, on its face --

1. conflicts with Acts of Congress, specifically, Title 28, U.S.C. Federal Rules of Civil Procedure, Rule 8 (notice pleading); and

2. conflicts with the applicable

decisions of this Court, specifically, Leatherman v. Tarrant County Narcotics Unit, ___ U.S. ___, 113 S.Ct. 1160, 1163 (1993) ("We think that it is impossible to square the 'heightened pleading standard' . . . with the liberal system of 'notice pleading' set up by the Federal Rules. . . [i]n Conley v. Gipson, 355 U.S. 41, 47, 78 S.Ct. 99, 103 (1957), we said in effect that . . . Rule [8] meant what it said: . . . ."") --

it follows that this "heightened Rule 8" requirement, as "the law of the circuit," has "no . . . force or effect," section 2072(b), and can not serve as legitimate ground for the dismissal of this action.

B. "Meritorious Claim"

The opinions below both state that this action was dismissed on grounds of Rule 12(b)(6), Fed. R. Civ. P., for fail-

ure to state a claim upon which relief can be granted. A relevant and revealing Eleventh Circuit case states that:

> On a related question about pleading (whether the complaint states a claim), we want to use this opportunity to repeat that, "in an effort to eliminate nonmeritorious claims on the pleadings and to protect public officials from protracted litigation involving specious claims, we, and other courts, have tightened the application of Rule 8 to [sec.] 1983 cases. Arnold v. Bd. of Educ. of Escambia County, 880 F.2d 305, 309 (11th Cir. 1989).
>
> In pleading a section 1983 action, some factual detail is necessary, especially if we are to be able to see that the allegedly violated right was clearly established when the allegedly wrongful acts occurred . . . .

Oladeinde v. City of Birmingham, 963 F.2d 1481, 1485 (11th Cir. 1992).

Since this "meritorious claim" pleading requirement, on its face --

1. conflicts with Acts of Congress,

specifically, Title 28, U.S.C. Federal Rules of Civil Procedure, Rule 8 (notice pleading), Rule 56 (summary judgment -- fair notice and opportunity to offer proof in support of claim), and Rule 1 (these Rules govern . . . just determination of every action); and

2. conflicts with the applicable decisions of this Court, specifically, Leatherman, supra at 1163 ("[F]ederal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims . . . .") -- it follows that this "meritorious claim" pleading requirement, as "the law of the circuit," has "no . . . force or effect," section 2072(b), and can not serve as legitimate ground for dismissal of this action as "patently frivolous"?

C. "Prevailing Party"

The order and judgment of the courts below imply "prevailing party" defendants, by taxing costs against Plaintiff-Appellant, even though the dismissal of this action flowed from a private, unrecorded Rule 16(b), Fed. R. Civ. P., pre-trial planning conference. (R1-13-2)

Since award of "prevailing party" status to defendants, under the circumstances of this case, on its face --

1. conflicts with Acts of Congress, specifically, Title 28, U.S.C. Federal Rules of Civil Procedure, Rule 1 (these Rules govern . . . the just determination of every action); Rule 77(b) ("All trials upon the merits shall be conducted in open court . . . ."), and Rule 54(d) ("costs shall be allowed . . . to the prevailing party"), and

2. conflicts with the applicable decisions of this Court, specifically,

Farrar v. Hobby, ___ U.S. ___, 113 S.Ct. 556, 573-74 (1992) ("to qualify as a prevailing party, a civil rights [party] must obtain at least some relief on the merits"; "'the moral satisfaction [that] results from any favorable statement of law' cannot bestow prevailing party status. Hewitt v. Helms, [482 U.S. 755] 762, [107 S.Ct 2672] 2676 [1987].") -- it follows that this award of "prevailing party" status to the defendants in this action, as the rule of law in this case, has "no . . . force or effect," section 2072(b), and can not serve as legitimate ground to deprive Petitioner of her money.

Respectfully submitted for your consideration.

Cordelia Ann Bodie

Cordelia Ann Bodie
Petitioner pro se

Certificate of Service

I hereby certify that three copies of this Petition for Writ of Certiorari to the U.S.C.A., Eleventh Circuit, have been properly served on the Counsel of Record (COR) for Respondents by depositing said copies in the United States Mail, properly addressed, postage prepaid, and certified, on the 7th day of June 1993.

Cordelia Ann Bodie

Cordelia Ann Bodie
Petitioner pro se
1128 Hermitage Ave SE
Huntsville, AL 35801

Copy to:

Hon. Kerri Wilson Riley
P.O. Box 308, Huntsville, AL 35804
COR for City of Huntsville and City Council (Kaufmann, Kling, Putnam, Showers, and Wall)

Hon. Michael Fees
P.O. Box 46, Huntsville, AL 35804
COR for Hettinger and Liles

Hon. George Royer
P.O. Box 18248, Huntsville, AL 35804
COR for Fitzpatrick, Hall, and Perry

Hon. Joe Campbell
P.O. Box 2087, Huntsville, AL 35804
COR for Huntsville Hospital and Hamilton

Hon. Donald Spurrier
3226 Bob Wallace Ave.,
Huntsville, AL 35805
COR for W-T-H & Assoc. and Thornton

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441
Non-Argument Calendar

D.C. Docket No. 92-N-103-NE

Cordelia Ann Bodie,

Plaintiff-Appellant

vs.

City of Huntsville, [et al.,]

Defendants-Appellees.

Appeal from the
United States District Court
for the Northern District of Alabama

Before ANDERSON, DUBINA and CARNES,
Circuit Judges.

PER CURIAM: (Entered March 3, 1993)

Appellant Cordelia Ann Bodie ("Bodie"), filed a pro se civil rights complaint under 42 U.S.C. 1983 in the United States District Court for the

Northern District of Alabama alleging that the defendants conspired to violate her constitutional rights. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. Moreover, the district court held that Bodie's vague and conclusory allegations of conspiracy were insufficient to state federal constitutional claims.

Our review of the record persuades us that the district court was correct in dismissing Bodie's complaint. We have consistently held that mere conclusory allegations are insufficient to state a claim under 42 U.S.C. 1983, particularly for conspiracy claims. See Oladeinde v. City of Birmingham, 963 F.2d 1481, 1485-87 (11th Cir. 1992) (vague allegations, unsupported by specific facts, constitute no basis for a section 1983 action);

Fullman v. Graddick, 739 F.2d 553, 556 (11th Cir. 1984) ("[i]n civil rights and conspiracy actions, . . . more than mere conclusory notice pleading is required"). Furthermore, absent a loss of pay or rank, there is no Fourteenth Amendment interest implicated by job transfer. See Oladeinde, 963 F.2d at 1486.

Bodie's claims of conspiracy lack the specificity required in civil rights actions and, in any event, she failed to allege how the defendants abridged her free speech rights or any other constitutional right.

For the foregoing reasons, we affirm the judgment of the district court. [1]

AFFIRMED.

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1. There is also pending in this cause the appellees' motion to strike portions of appellant's brief which we deny as moot.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441

Non-Argument Calendar

D.C. Docket No. 92-N-103

Cordelia Ann Bodie,

Plaintiff-Appellant,

vs.

City of Huntsville, et al.,

Defendants-Appellees.

Appeal from the
United States District Court
for the Northern District of Alabama

Before ANDERSON, DUBINA and CARNES,

Circuit Judges.

JUDGMENT

(Entered March 3, 1993)

This cause came to be heard on the transcript of the record from the United

States District Court for the Northern District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

It is further ordered that plaintiff-appellant pay defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

For the Court: Miguel J. Cortez, Clerk

By: /s/ Deputy Clerk

Issued as Mandate April 26, 1993

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

No. CV-92-N-0103-NE

Cordelia Ann Bodie,

Plaintiff,

vs.

City of Huntsville, et al.,

Defendants.

ORDER OF DISMISSAL

(Entered April 22 1992)

This civil action is before the court on motion of all the defendants to dismiss pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim upon which relief can be granted. The motions have been briefed and submitted for decision. After one complaint, one amended complaint and a proffered second amended complaint, the plaintiff has presented the court with nothing more than

twenty pages of single spaced, typewritten, legal silliness. The motions to dismiss will be granted and the action will be dismissed.

According to the complaint, as last amended, the plaintiff Cordelia Ann Bodie was employed by the City of Huntsville, Alabama, as City Nurse from May 19, 1976, until July 30, 1990, when she resigned her employment. She claims that the defendants conspired to create intolerable working conditions so as to deprive her of the right to employment with the City of Huntsville. The plaintiff recites a series of seemingly unrelated events that allegedly occurred over a period of approximately six years and concludes that she has been the victim of a conspiracy. Vague and conclusory allegations of conspiracy are insufficient as a matter of law to state federal constitu-

tional claims. Fullman v. Graddick, 739 F.2d 553 (11th Cir. 1984).

Without recounting all the many details alleged by the plaintiff, it is sufficient to note that she fails to allege any violation of any federally protected right. Almost without exception, she recounts events having to do with the decision of the City of Huntsville to cease the operation of a City Clinic, of which she was director, and to transfer the functions of that clinic to a public hospital, defendant Healthcare Authority of Huntsville. She claims that she was forced to resign her employment after she was transferred to the city jail because of intolerable working conditions but fails to allege facts which, if proven, would demonstrate that conditions were, in fact, intolerable. She does not claim that she filed any

grievance concerning the alleged conditions at the jail. See, Garner v. Wal-Mart Stores, Inc., 807 F.2d 1536 (11th Cir. 1987).

As noted at the Rule 16(b) conference in this case, the action, at least as to most defendants, is patently frivolous and may entitle them to an award of attorney fees under 42 U.S.C. [sec.] 1988.

The action is DISMISSED and costs are taxed against the plaintiff.

Done, this 22nd of April, 1992.

/s/ Edwin L. Nelson
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441

Cordelia Ann Bodie,

Plaintiff-Appellant

vs.

City of Huntsville [et al.,]

Defendants-Appellees

On Appeal from the
United States District Court for
the Northern District of Alabama

ON PETITION FOR REHEARING

(Entered April 12, 1993)

BEFORE: ANDERSON, DUBINA, and CARNES,
Circuit Judges

PER CURIAM:

The Petition for rehearing filed by appellant Cordelia Ann Bodie is denied.

ENTERED FOR THE COURT:

/s/ Joel F. Dubina
United States Circuit Judge

(2)

Supreme Court, U.S.
FILED
JUL 8 1993
OFFICE OF THE CLERK

No. 92-1968

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

CORDELIA ANN BODIE,
Petitioner,

vs.

CITY OF HUNTSVILLE, et al.,
Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOE W. CAMPBELL
Counsel of Record
GEORGE E. KNOX, JR.
JEFFREY T. KELLY
LANIER FORD SHAVER & PAYNE, P.C.
P.O. Box 2087
Huntsville, Alabama 35804
(205) 535-1100

Counsel for Respondents
Jeff Hamilton and the Health Care
Authority of the City of Huntsville
d/b/a/ Huntsville Hospital

St. Louis Law Printing, Inc. 13307 Manchester Rd. St. Louis, MO 63131 314-231-4477

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QUESTIONS PRESENTED

Whether certiorari should be granted to review a judgment which reaches the correct result merely because one asserted ground for the judgment, a "heightened pleading requirement" for civil rights actions, is incorrect.

Whether costs were properly taxed to the petitioner when her action was dismissed for failure to state a claim and the dismissal was affirmed on appeal.

PARTIES

Cordelia Ann Bodie, Petitioner;

Errol Fitzpatrick, Risk Manager, City of Huntsville, Alabama, Respondent;

Larry P. Hall, Risk Management Department, City of Huntsville, Alabama, Respondent;

Jeff Hamilton, Employee of The Health Care Authority of the City of Huntsville, Alabama, Respondent;

Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital, Respondent;

Steve Hettinger, Mayor of the City of Huntsville, Alabama, Respondent;

City of Huntsville, Alabama, Respondent;

Ernest Kaufmann, Council Member, City of Huntsville, Alabama, Respondent;

Bill Kling, Council Member, City of Huntsville, Alabama, Respondent;

Richard Liles, Administrative Assistant to the Mayor of the City of Huntsville, Respondent;

Charles Perry, Respondent;

James Putnam, Council Member, City of Huntsville, Alabama, Respondent;

Richard Showers, Council Member, City of Huntsville, Alabama, Respondent;

James D. Thornton, III, Respondent;

James Wall, Jr., Council Member, City of Huntsville, Alabama, Respondent;

Wikle, Thornton, Holcombe and Associates, Inc., Respondent;

The Healthcare Authority of the City of Huntsville, d/b/a Huntsville Hospital, has no parent company and no subsidiaries which are not wholly owned.

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A. The petitioner failed to allege a violation of any federally protected right which would give rise to a cause of action under Section 1983.	7

B. The petitioner's failure to allege any facts whatsoever to support her allegation that these respondents were guilty of a conspiracy to violate her civil rights required the dismissal of her action. 7

C. Dismissal of the petitioner's action was appropriate because it was barred by the applicable statute of limitations. 8

II. THE ROUTINE ASSESSMENT OF COSTS AGAINST THE PETITIONER AS THE LOSING PARTY IN THE LAWSUIT WAS NOT ERROR AND DOES NOT MERIT REVIEW BY THE COURT. 9

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No. 92-1968

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

CORDELIA ANN BODIE,
Petitioner,

vs.

CITY OF HUNTSVILLE, et al.,
Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF OPINIONS BELOW

The opinion of the Eleventh Circuit affirming the district court's dismissal of the petitioner's action is unreported (App. A, *infra*, A1-A2). Also unreported are the district court's order dismissing the case (App. B, *infra*, A3-A4) and the Eleventh Circuit's order denying the petition for rehearing filed in that court (App. C, *infra*, A5).

STATEMENT OF JURISDICTION

The Court has discretionary jurisdiction to grant certiorari in this case pursuant to 28 U.S.C. § 1254(1). The Court of Appeals for the Eleventh Circuit entered its judgment in favor of the respondents and issued its opinion on March 3, 1993. The petitioner filed a petition for rehearing on March 22, 1993, and the petition was denied on April 12, 1993. The petitioner filed a petition for writ of certiorari in this Court on June 7, 1993.

STATUTES INVOLVED

42 U.S.C. § 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

This civil action began on January 10, 1992 when the petitioner, Cordelia Ann Bodie, filed a complaint pursuant to 42 U.S.C. § 1983 in the U.S. District Court for the Northern District of Alabama. (R. 1-1-1). The complaint named fifteen separate individuals and entities as defendants and contained four counts in which the petitioner alleged that the defendants had conspired to deprive her of her civil rights under color of state law.

The petitioner is a registered nurse formerly employed by the City of Huntsville, Alabama at the City Clinic. (R.1-3-2). The

named defendants included the City of Huntsville, the Mayor of the City, all members of the Huntsville City Council, various employees of the City, the Health Care Authority of the City of Huntsville, an employee of the Health Care Authority, an insurance agency in Huntsville, and a principal in that agency. (R. 1-1-3-4). On February 3, 1992, the petitioner filed an amended complaint in which she essentially set forth the same claims contained in the original complaint without materially changing her allegations. (R. 1-3-1).

With regard to the respondents Jeff Hamilton and the Health Care Authority of the City of Huntsville ("Huntsville Hospital"), the complaint, as amended, appears to allege that those defendants 1) conspired with the other defendants to deprive the petitioner of the employment of her choosing without due process and in violation of the Fourteenth Amendment to the United States Constitution, 2) conspired with the other defendants to "freeze out" the petitioner from her employment at the Huntsville City Clinic by "requiring her to work in an unsafe and unsanitary work environment" and thereby depriving the petitioner of "equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution," 3) conspired with the other defendants to compel the petitioner to leave her employment with the City of Huntsville in retaliation for her pursuit of an employee grievance, in violation of the petitioner's First Amendment rights of free speech and petition, and 4) conspired with the other defendants "to interfere with and impair the value of" a personal professional liability insurance policy held by the petitioner, in violation of Article I, Section 10, of the Constitution of the United States. (R. 1-3-9-12).

The above claims actually appear to have been asserted against each of the defendants and were asserted against Hamilton and Huntsville Hospital only insofar as they fell within the general category of "defendants." The only specific allegations concerning conduct on the part of Hamilton and the Hospital

were that 1) Hamilton brought health care consultants to the City Clinic in November 1988 to aid him in gathering information regarding the manner in which the clinic was operated, and 2) Huntsville Hospital subsequently submitted to the City of Huntsville a report concerning Hamilton's findings. (R. 1-2-6-7).

All defendants filed motions to dismiss the action on the grounds that, *inter alia*, the petitioner had failed to state a claim upon which relief could be granted. (R. 1-5-1, 1-4, 5, 7, 8, 10). On April 22, 1992, the district court entered an order granting the motions to dismiss filed by the defendants. (R. 1-13-1). The district court stated:

> After one complaint, one amended complaint and a proffered second amended complaint, the plaintiff has presented the court with nothing more than 20 pages of single-spaced, typewritten, legal silliness. . . . The plaintiff recites a series of seemingly unrelated events that allegedly occurred over a period of approximately six years and concludes that she has been the victim of a conspiracy. . . . Without recounting all the many details alleged by the plaintiff, it is sufficient to note that she fails to allege any violation of any federally protected right . . . As noted at the Rule 16(b) conference in this case, the action, at least as to most defendants, is patently frivolous and may entitle them to an award of attorney's fees under 42 U.S.C. § 1988.

(R. 1-13-1, 2).

The petitioner filed an appeal to the Court of Appeals for the Eleventh Circuit on May 15, 1992. (R. 1-19-1). On March 3, 1993, the Eleventh Circuit affirmed the judgment of the district court and issued an unpublished opinion stating that "Bodie's claims of conspiracy lack the specificity required in civil rights actions and, in any event, she failed to allege how the defendants abridged her free speech rights or any other constitutional right." A petition for rehearing filed on March 22, 1993 was denied on

April 12, 1993, and the petitioner filed a petition for writ of certiorari in this Court on June 7, 1993.

SUMMARY OF ARGUMENT

The petition for writ of certiorari is due to be denied because the judgment of the Eleventh Circuit was correct. The "heightened pleading requirement" was merely one reason asserted by the Eleventh Circuit for holding that the dismissal of the petitioner's action was proper. The additional grounds stated in the opinion of the Eleventh Circuit are not in conflict with any decision of this Court and, standing alone, required an affirmance of the district court's dismissal of the petitioner's claims. Moreover, the district court's decision could have been appropriately affirmed on grounds not referred to in the opinion of the Eleventh Circuit, as the petitioner's pleadings themselves affirmatively demonstrated that all claims presented against these respondents were barred by the applicable statute of limitations.

The petitioner's contention that certiorari is due to be granted because the courts below somehow erred in taxing costs to the petitioner is also without merit. The respondents prevailed both in the district court and on appeal, and the assessment of costs to the petitioner was appropriate.

ARGUMENT

I. THE JUDGMENT OF THE ELEVENTH CIRCUIT WAS CORRECT AND THE PETITION FOR WRIT OF CERTIORARI IS DUE TO BE DENIED BECAUSE, UNDER ANY STANDARD, THE PETITIONER FAILED TO STATE A CLAIM FOR WHICH RELIEF COULD BE GRANTED.

The petitioner contends that certiorari is due to be granted because, in the opinion issued by the Eleventh Circuit, that Court relied in part upon the "heightened pleading requirement" recently invalidated by this Court in *Leatherman v. Tarrant County Narcotics Unit*, _ U.S. __, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993). However, this Court reviews judgments and not opinions. *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct 2778, 81 L.Ed.2d 694 (1984). A correct judgment will not be disturbed even if based upon an inappropriate ground or a wrong reason. *Helvering v. Gowan*, 302 U.S. 238, 58 S.Ct. 154, 82 L.Ed.2d 244 (1937). The petition for writ of certiorari is due to be denied because a dismissal of the petitioner's action was required for several reasons, some of which were stated in the Eleventh Circuit's opinion and in the district court's order of dismissal.

Each of the lower courts correctly recognized that the petitioner failed to allege a violation of any federally protected right that would be actionable under 42 U.S.C. § 1983. The petitioner also presented no factual averments which, if proven, would support the bold conclusion that these respondents conspired to violate the petitioner's civil rights. Finally, the allegations contained in the complaint, as amended, indicated that the petitioner's claims were barred by the applicable statute of limitations.

A. The petitioner failed to allege a violation of any federally protected right which would give rise to a cause of action under Section 1983.

Even a cursory review of the pleadings filed by the petitioner reveals that she wholly failed to allege that these respondents took any action to violate her civil rights. The district court specifically noted that there was a complete failure to "allege any violation of any federally protected right" (R. 1-13-1), and the Eleventh Circuit observed that the petitioner "failed to allege how the defendants abridged her free speech rights or any other constitutional right." Even in the absence of a "heightened pleading requirement," the petitioner simply did not state a cause of action under Section 1983.

The petitioner's failure to aver facts indicating that her constitutional rights were violated in a manner which might give rise to a cause of action under Section 1983 required the district court to dismiss her action and required the Eleventh Circuit to affirm. It is well-established that a complaint must allege the necessary elements of a claim in order to withstand a motion to dismiss. *Strauss v. City of Chicago*, 760 F.2d 765 (7th Cir. 1985); *District of Columbia v. Air Florida, Inc.*, 750 F.2d 1077 (D.C. Cir. 1984); *Blum v. Morgan Guar. Trust Co. of New York*, 709 F.2d 1463 (11th Cir. 1983). The allegations contained in the petitioner's complaint and amended complaint were insufficient under the notice pleading provisions of Rule 8 of the Federal Rules of Civil Procedure.

B. The petitioner's failure to allege any facts whatsoever to support her allegation that these respondents were guilty of a conspiracy to violate her civil rights required the dismissal of her action.

The petitioner's complaint and amended complaint alleged that Jeff Hamilton and Huntsville Hospital initiated a study of the Huntsville City Clinic and made certain recommendations to the

City concerning future management of the clinic. There were no other specific allegations of conduct by Huntsville Hospital or Hamilton.

These allegations, even if presumed true as required on a Rule 12(b)(6) motion to dismiss, do not in any way support the theory that Hamilton and Huntsville Hospital were involved in a conspiracy to violate the petitioner's civil rights. It has long been the rule in the Eleventh Circuit and its predecessor circuit that a complaint cannot survive a motion to dismiss if it merely sets forth conclusory allegations without alleging facts which, if proven, would warrant the relief sought. *Davidson v. State of Georgia*, 622 F.2d 895 (5th Cir. 1980).

C. Dismissal of the petitioner's action was appropriate because it was barred by the applicable statute of limitations.

In *Owens v. Okure*, 488 U.S. 235, 109 S.Ct. 573, 102 L.Ed. 2d 594 (1989), a unanimous Court held as follows:

> . . . where state law provides multiple statues of limitations for personal injury actions, courts considering § 1983 claims should borrow the general or residual statute for personal injury actions.

Owens, 109 S.Ct. at 582. In an earlier footnote, the Court in *Owens* specifically cited *Alabama Code* § 6-2-38(l) (1975) as an example of a "general provision which applies to all personal injury actions." *Id.* at 579. Based upon the above, the Eleventh Circuit held that "after *Owens*, the two year statute of limitations of *Ala. Code* § 6-2-38(l) applies to section 1983 actions in Alabama." *Jones v. Preuit*, 876 F.2d 1480, 1483 (11th Cir. 1989).

In cases involving a continuing conspiracy to violate civil rights, the statute of limitations runs from the occurrence of each act in furtherance of the alleged conspiracy. *Jimenez v. Toledo*,

604 F.2d 99 (P.R. 1979). In the instant case, the petitioner has failed to set forth any allegation that the respondents actively or deliberately concealed the alleged conspiracy so as to toll the applicable statute of limitations. Therefore, the general rule cited above governs this action and the statute of limitations must run from the last wrongful act of Huntsville Hospital and Jeff Hamilton alleged in the complaint. *Singleton v. City of New York*, 632 F.2d 185 (2nd Cir. 1980), *cert. denied* 450 U.S. 920, 101 S.Ct. 1368, 67 L.Ed.2d 347 (1981).

The petitioner's complaint alleges no culpable conduct on the part of these respondents after January 4, 1990. In fact, there is no allegation of *any* conduct by Huntsville Hospital or Hamilton after January 4, 1990. Because the petitioner's suit was not filed until January 10, 1992, the applicable statute of limitations bars the petitioner's action against Hamilton and Huntsville Hospital and the Eleventh Circuit correctly affirmed the district court's dismissal of the case.

II. THE ROUTINE ASSESSMENT OF COSTS AGAINST THE PETITIONER AS THE LOSING PARTY IN THE LAWSUIT WAS NOT ERROR AND DOES NOT MERIT REVIEW BY THE COURT.

Both the district court and the Eleventh Circuit awarded costs to the respondents after entering judgment in their favor. The petitioner contends that this assessment of costs merits review by the Court because taxing costs to the petitioner somehow erroneously implies that the respondents were "prevailing parties." Actually, the respondents did prevail both in the district court and on appeal, and the assessment of costs against the petitioner as the losing party in the lawsuit was not only permissible but routine.

The Federal Rules of Civil Procedure provide that "costs shall be allowed as of course to the prevailing party unless the court otherwise directs . . . " Fed. R. Civ. P. 54(d). Where an action is

dismissed for failure to state a claim upon which relief may be granted, as occurred in the present case, the defendant is a "prevailing party" to whom costs are to be awarded. *See, e.g., Burda v. M. Ecker Company*, 954 F.2d 434, 440 (7th Cir. 1992); *Lepucki v. Van Wormer*, 587 F.Supp. 1390, 1394 (N.D. Ind. 1984), *aff'd per curiam*, 765 F.2d 86 (7th Cir.), *cert. denied* 474 U.S. 827, 106 S.Ct. 86, 88 L.Ed.2d 71 (1985). As this Court has noted, liability for costs is a "normal incident of defeat." *Delta Airlines, Inc. v. August*, 450 U.S. 346, 352, 101 S.Ct. 1146, 1150, 67 L.Ed. 2d 287 (1981). A civil rights litigant is treated no differently than litigants in other cases with regard to taxation of costs, *Poe v. John Deere Company*, 695 F.2d 1103, 10108 (8th Cir. 1982), and the district court's taxation of costs to the petitioner was not error.

The Eleventh Circuit's taxation of costs on appeal was also appropriate. The Federal Rules of Appellate Procedure provide that, when a judgment is affirmed, "costs shall be taxed against the appellant unless otherwise ordered . . ." Fed. R. App. P. 39(a). In accordance with this rule, costs were taxed against the petitioner when the district court's judgment was affirmed by the Eleventh Circuit. The petitioner's contention that this routine assessment of costs merits the Court's review is based upon an erroneous belief that a party in a civil rights action must qualify as a "prevailing party" under 42 U.S.C. § 1988 in order to be awarded court costs. As support for her argument, the petitioner cites only *Farrar v. Hobby*, __ U.S. __, 113 S.Ct. 566, 121 L.Ed. 2d. 494 (1992) and *Hewitt v. Helms*, 482 U.S. 755, 107 S.Ct. 2672, 96 L.Ed. 2d 654 (1987), two cases in which the Court addressed the standard for awarding attorney's fees to plaintiffs in civil rights cases. These decisions have no application to the case at bar, and the petition for writ of certiorari is due to be denied.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari is due to be denied.

Respectfully submitted,

Joe W. Campbell
Counsel of Record

George E. Knox, Jr.
Jeffrey T. Kelly

Counsel for Respondents
Jeff Hamilton and the Health Care Authority of the City of Huntsville d/b/a/ Huntsville Hospital

Of Counsel:

LANIER FORD SHAVER & PAYNE, P.C.
P.O. Box 2087
Huntsville, AL 35804
(205) 535-1100

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing have been served upon the attorneys of record for this cause, by first-class mail, postage prepaid, on this the 8th day of July, 1993, as follows:

Cordelia Ann Bodie
Petitioner pro se
1128 Hermitage Ave SE
Huntsville, AL 35801

Kerri Wilson Riley
P.O. Box 308
Huntsville, AL 35804

Michael Fees
P.O. Box 18248
Huntsville, AL 35804

Donald Spurrier
3226 Bob Wallace Ave.
Huntsville, AL 35805

/s/ Jeffrey T. Kelly
Of Counsel

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441
Non-Argument Calendar

D.C. Docket No. 92-N-103

CORDELIA ANN BODIE,
Plaintiff-Appellant,

versus

CITY OF HUNTSVILLE;
WIKLE, THORNTON, HOLCOMBE & ASSOCIATES, INC.;
HEALTHCARE AUTHORITY,
THE CITY OF HUNTSVILLE, dba Huntsville Hospital;
STEVE HETTINGER; ERNEST KAUFMAN;
BILL KLING, JR.; JAMES PUTNAM;
RICHARD SHOWERS; JAMES WALL, JR.;
ERROLL FITZPATRICK; LARRY P. HALL;
RICHARD LILES; CHARLES PERRY; JEFF HAMILTON;
JAMES D. THORNTON, III,
Defendants-Appellees.

Appeal from the United States District
for the Northern District of Alabama

(March 3, 1993)

Before ANDERSON, DUBINA and CARNES, Circuit Judges.

PER CURIAM:

Appellant Cordelia Ann Bodie ("Bodie"), filed a pro se civil rights complaint under 42 U.S.C. § 1983 in the United States District Court for the Northern District of Alabama alleging that

the defendants conspired to violate her constitutional rights. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. Moreover, the district court held that Bodie's vague and conclusory allegations of conspiracy were insufficient to state federal constitutional claims.

Our review of the record persuades us that the district court was correct in dismissing Bodie's complaint. We have consistently held that mere conclusory allegations are insufficient to state a claim under 42 U.S.C. § 1983, particularly for conspiracy claims. *See Oladeinde v. City of Birmingham,* 963 F.2d 1481, 1485087 (11th Cir. 1992) (vague allegations, unsupported by specific facts, constitute no basis for a section 1983 action); *Fullman v. Graddick*, 739 F.2d 553, 556 (11th Cir. 1984) ("[i]n civil rights and conspiracy action,... more than mere conclusory, notice pleading is required"). Furthermore, absent a loss of pay or rank, there is no Fourteenth Amendment interest implicated by job transfer. *See Oladeinde*, 963 F.2d at 1486.

Bodie's claims of conspiracy lack the specificity required in civil rights actions and, in any event, she failed to allege how the defendants abridged her free speech rights or any other constitutional right.

For the foregoing reasons, we affirm the judgment of the district court.[1]

AFFIRMED.

---

[1] There is also pending in this cause the appellees' motions to strike portions of appellant's brief which we deny as moot.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

CV-92-N-0103-NE

CORDELIA ANN BODIE,
Plaintiff,

vs.

CITY OF HUNTSVILLE, et al.,
Defendants.

Order of Dismissal

This civil action is before the court on motion of all the defendants to dismiss pursuant to Rule 12(b)(6), Fed.R.Civ.P., for failure to state a claim upon which relief can be granted. The motions have been briefed and submitted for decision. After one complaint, one amended complaint and a proffered second amended complaint, the plaintiff has presented the court with nothing more than twenty pages of single spaced, typewritten, legal silliness. The motions to dismiss will be granted and the action will be dismissed.

According to the complaint, as last amended, the plaintiff Cordelia Ann Bodie was employed by the City of Huntsville, Alabama, as City Nurse from May 19, 1976, until July 30, 1990, when she resigned her employment. She claims that the defendants conspired to create intolerable working conditions so as to deprive her of the right to employment with the City of Huntsville. The plaintiff recites a series of seemingly unrelated events that allegedly occurred over a period of approximately six years and concludes that she has been the victim of a conspiracy. Vague and conclusory allegations of conspiracy are insufficient

as a matter of law to state federal constitutional claims. *Fullman v. Graddick*, 739 F.2d 553 (11th Cir. 1984).

Without recounting all the many details alleged by the plaintiff, it is sufficient to note that she fails to allege any violation of any federally protected right. Almost without exception, she recounts events having to do with the decision of the City of Huntsville to cease the operation of a City Clinic, of which she was director, and to transfer the functions of that clinic to a public hospital, defendant Healthcare Authority of Huntsville. She claims that she was forced to resign her employment after she was transferred to the city jail because of intolerable working conditions but fails to allege facts which, if proven, would demonstrate that conditions were, in fact, intolerable. She does not claim that she filed any grievance concerning the alleged conditions at the jail. *See, Garner v. Wal-Mart Stores, Inc.*, 807 F.2d 1536 (11th Cir. 1987).

As noted at the Rule 16(b) conference in this case, the action, at least as to most defendants, is patently frivolous and may entitle them to an award of attorney fees under 42 U.S.C. § 1988.

The action is **DISMISSED** and costs are taxed against the plaintiff.

Done, this 22nd of April, 1992.

/s/Edwin L. Nelson
EDWIN L. NELSON
UNITED STATES
DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441

CORDELIA ANN BODIE,
Plaintiff-Appellant,

versus

CITY OF HUNTSVILLE; WIKLE, THORNTON,
HOLCOMBE & ASSOCIATES, INC.
HEALTHCARE AUTHORITY,
THE CITY OF HUNTSVILLE, dba Huntsville Hospital;
STEVE HETTINGER; ERNEST KAUFMAN;
BILL KLING, JR.; JAMES PUTNAM;
RICHARD SHOWERS; JAMES WALL, JR.;
ERROLL FITZPATRICK; LARRY P. HALL;
RICHARD LILES; CHARLES PERRY; JEFF HAMILTON;
JAMES D. THORNTON, III,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION FOR REHEARING

BEFORE: ANDERSON, DUBINA, and CARNES, Circuit Judges.

PER CURIAM:

The petition for rehearing filed by appellant Cordelia Ann Bodie is denied.

ENTERED FOR THE COURT:
/s/ JOEL F. DUBINA
United States Circuit Judge

April 12, 1993

(3)

92-1968

Supreme Court, U.S.
FILED
JUL 9 1993
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

CORDELIA ANN BODIE,

Petitioner,

v.

CITY OF HUNTSVILLE, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

Donald N. Spurrier
3226 Bob Wallace Avenue
Huntsville, Alabama 35805
(205) 533-5015
Attorney for Respondents
Wikle, Thornton, Holcombe
& Associates and James D. Thorton

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38 pp

QUESTIONS PRESENTED FOR REVIEW

I. Whether a "heightened Rule 8" pleading requirement, as applied to civil rights and conspiracy actions is a permissible basis for dismissal of actions brought pursuant to Title 42, U.S.C. Section 1983?

II. Whether a meritorious claim pleading requirement applied to Section 1983 actions, is a permissible ground for dismissal of a civil rights action as "patently frivolous?"

III. Whether there was sufficient grounds to support the determination that the Respondents should be given prevailing party status regarding costs?

PARTIES TO THE ACTION, INCLUDING PARENT COMPANIES AND SUBSIDIARIES

Petitioner

Cordelia Ann Bodie

Respondents

City of Huntsville, a municipal corporation

Larry P. Hall, Risk Management Department, City of Huntsville, Alabama

Errol Fitzpatrick, Risk Manager, City of Huntsville, Alabama

Jeff Hamilton, employee of the Health Care Authority for the City of Huntsville, Alabama

Health Care Authority of the City of Huntsville, Alabama d/b/a Huntsville Hospital

Steve Hettinger, Mayor of City of Huntsville, Alabama

Ernest Kaufmann, Council Member, City of Huntsville, Alabama

Bill Kling, Council Member, City of Huntsville, Alabama

Richard Liles, Administrative Assistant to the Mayor of the City of Huntsville, Alabama

James Putnam, Council Member, City of Huntsville, Alabama

Richard Showers, Council Member, City of Huntsville, Alabama

James D. Thorton, III, an independent insurance agent employed by Wikle, Thornton, Holcombe & Associates

James Wall, Jr., Council Member, City of Huntsville, Alabama

Wikle, Thornton, Holcombe & Associates, Inc.[1]

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[1] Respondent, Wikle, Thornton, Holcombe & Associates, Inc. has no parent or subsidary companies.

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IN THE

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CITY OF HUNTSVILLE, et al.,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Wikle, Thornton, Holcombe & Associates (hereinafter, Wikle & Associates) and Respondent James D. Thornton (hereinafter, "Thornton") assert that the petition for certiorari in the above-referenced matter should be denied.

OPINIONS BELOW

The opinion of the District Court (Respondents' Appendix C) is an unpublished opinion. The opinion of the Eleventh Circuit Court of Appeals is reported at 978 F. 2d. 774 (Respondents' Appendix A), and the judgment of the Eleventh Circuit Court of Appeals is set forth in (Respondents' Appendix B).

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS

With the exception of Article I, Section 10 of the United States Constitution and 42 U.S.C. sec. 1988 set forth below, the constitutional and statutory provisions are adequately set forth in the petition.

United States Constitution, Article I, Section 10 provides in pertinent part:

> No state shall pass any Law impairing the Obligation of Contracts.

42 U.S.C. Sec. 1988 provides:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, ..., the court in its discretion, may allow the prevailing party, other than the United states, a reasonable attorney's fee as part of the costs.

STATEMENT OF THE CASE

The action currently before the Court was filed by the Petitioner, Cordelia Ann Bodie, on January 10, 1992 in the United States District Court for the Northern District of Alabama, Northeast Division. (R.1-1-1) The Complaint named fifteen defendants and

contained four counts setting forth alleged deprivations of constitutional rights in violation of 42 U.S.C. 1983. (R.1-1-1) An amended Complaint was filed on February 3, 1992 setting forth essentially the same four counts contained in the original Complaint, without material amendment. (R.1-3-1) Subsequent to the filing of the amended Complaint, all Respondents filed Motions to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedures (R.1-4, 5, 7, 8, 10). The district court entered a submission order regarding the pending motions to dismiss, informing the parties to the action that the motions to dismiss would be deemed submitted to the Court for decision at the court's motion docket on March 27, 1992, and setting forth the court's requirement for submission of briefs (R.1-11-1). On April 1, 1992, Petitioner attempted to file a second amended complaint without leave of court as required by Rule 15 of the Federal Rules Civil Procedure. On April 22, 1992, the district court entered an order dismissing all claims against the Respondents (R.1-13-1) (Respondents' Appendix C).

The Petitioner, pro-se, filed Notice of Appeal to the Eleventh Circuit Court on May 15, 1992. (R.1-19). On March 3, 1993, the Eleventh Circuit Court of Appeals affirmed the dismissal of this action and taxed costs against the Petitioner. (Respondents' Appendix A) Petitioner filed a timely petition for rehearing on March 22, 1993 which was denied by the Eleventh Circuit Court of Appeals on April 12, 1993 (Respondents' Appendix B).

SUMMARY OF THE ARGUMENT

The petition for writ of certiorari is due to be denied in this matter for several reasons. As a result of this Court's decision in Leatherman v. Tarrant Co., 113 S.Ct. 1160 (1993), all conflicts among the circuits were resolved. Furthermore, the were other adequate grounds upon which the lower courts could, and did, base their decision that the complaint of the Petitioner was due to be dismissed.

An examination of the Petitioner's complaint shows that the cause of action, if any, is barred by the applicable statute of limitations. Specifically, the alleged conduct of these Respondents occurred more than four years prior to the filing of the Petitioner's complaint. Furthermore, the Petitioner fails to state a deprivation of any constitutionally protected right. Petitioner was basically transferred from one location as City nurse to another. This is insufficient to state a cause of action under 42 U.S.C. Sec. 1983. Furthermore, in regard to the allegations concerning the private policy of insurance between the Petitioner and St. Paul Insurance Company, if a cause of action exists, it is merely one of breach of contract.

The Petitioner asks this Court to review the awarding of costs against her. Although the Court of Appeals awarded costs to the Respondents, the district court's determination of costs is not yet final. Therefore, the Respondents assert that any arguments concerning the status of the Respondents as "prevailing parties" is

premature, as there has been no final determination by the district court.

ARGUMENT

I. THE RULING IN LEATHERMAN V. TARRANT CO., 113 S.CT. 1160 (1993) RESOLVED ALL CONFLICTS AMONG THE CIRCUITS THEREBY PRECLUDING THE NECESSITY FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI.

Respondents, Wikle & Associates and Thornton concede that the decision rendered by the District Court and Eleventh Circuit Court of Appeals in the matter before the Court is in conflict with the opinion of this Court entered on March 3, 1993 in Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 113 S. Ct. 1160 (1993). The decision of the Eleventh Circuit in this matter was issued on March 3, 1993, the same day that this Court entered its decision in Leatherman. As a result of the opinion in Leatherman, any conflicts among the Courts of Appeal concerning the applicability of a

heightened pleading standard to 1983 actions were resolved. Therefore, the petition for writ of certiorari is due to be denied. Although the decision of the Eleventh Circuit was in conflict with the Leatherman decision, there were other adequate grounds upon which the District Court and Eleventh Circuit Court of Appeals could have dismissed the Complaint of the Petitioner, all of which were asserted by the Respondents in the District Court proceedings and the Appeal before the Eleventh Circuit Court of Appeals.

II. THE PETITIONER'S CLAIMS ARE BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

Petitioner's action is clearly barred by the applicable statute of limitations, thereby requiring dismissal of her Complaint. The specific facts alleged by the Petitioner as giving rise to a claim against Respondents, Wikle & Associates and Thornton occurred on January 2, 1986, September 1, 1987 and November 5, 1987. The last alleged conduct by these

Respondents occurred more than four years prior to the filing of the Petitioner's complaint.

In Owens v. Okure, 488 U.S. 235 (1989), this Court held that in states with more than one statute of limitations for personal injury actions, Section 1983 claims were to be governed by the State's general or residual statute for personal injury. Therefore, based upon the Owens decision, the Federal Courts and the Alabama Supreme Court have held that the two-year limitations set forth in Section 6-32-38(1) Code of Alabama (1975) applies to Section 1983 claims in the State of Alabama. McKissick v. Busby, 936 F.2d 520 (11th Cir. 1991); Kimbrough v. Bowman Transportation, Inc, 920 F. 2d 1578 (11th Cir. 1991); Morrow v. Town of Littleville, 576 So. 2d. 210 (Ala. 1991).

In the District Court below, Petitioner contended that her claims were not barred by the limitations as a result of a "continuous conspiracy" among the Respondents. In a continous conspiracy to violate

civil rights, the limitations statute ordinarily runs from the occurrence of each action. Safeguard Mutual Ins. Co. V. Miller, 477 F. Supp. 299 (D.C. Pa. 1979); Hernadez Jimenez v. Carleno Toledo, 604 F.2d 99 (Puerto Rico 1979) When a Plaintiff fails to allege an active concealment of conspiracy within the applicable limitations period, she cannot simply postpone an alleged accrued claim indefinitely on the grounds of an ongoing conspiracy. Singleton v. City of New York, 632 F.2d 185, 192 (2nd Cir. 1980); Vitale v. Muzzo, 674 F. Supp. 402 (D.Conn. 1986). No such allegation of act of concealment is alleged by the Petitioner.

It is evident from the face of the pleadings that any cause of action the Petitioner may have had is barred by the applicable statute of limitations, and therefore, the petition for writ of certiorari is due to be denied.

III. THE DISTRICT COURT PROPERLY DISMISSED THE PETITIONER'S CLAIMS AS NOT STATING A CAUSE OF ACTION UNDER 42 U.S.C. SECTION 1983.

Petition for writ of certiorari is due to be denied in that, the Plaintiff fails to state a deprivation of a constitutional right as indicated in the Eleventh Circuit's Opinion. In count four of the Appellant's amended Complaint, Petitioner Bodie alleges that Respondents, including Respondents Wikle & Associates and Thornton, conspired and acted in concert to interfere with, and impair the value of, her personal professional liability insurance policy with St. Paul Fire & Marine Insurance Company and that such actions were committed under the color of State law (R.1-3-12). Petitioner asserts that such conduct was in violation of her civil rights, including those guaranteed by 42 U.S.C. Section 1983, and Article 1, Section 10 of the United States Constitution forbidding governmental impairment of the obligation of contracts.

Based upon the previous decisions of this Court, the alleged contractual impairment asserted by Petitioner is not afforded protection under Section 1983. It is well accepted that the range of interests protected by Section 1983 is limited. Board of Regents of State Colleges vs. Roth, 408 U.S. 564, 570 (1972). Section 1983 was intended by Congress to enforce the provisions of the 14th Amendment which is the cornerstone of the statute. Mitchum v. Foster, 407 U.S. 225 (1972); Monroe v. Pape, 365 U.S. 167, 171 (1961).

The scope of constitutional rights included within the 14th Amendment was not intended to "shift the whole of public law of the states into the federal courts." Physician's Serv. Med. Group v. San Bernardino City, 825 F.2d 1404, 1408 (9th Cir. 1987). The bar against enacting laws that impair contractual obligations found in United States Constitution, Article 1, Section 10, has never been incorporated into the sphere of 14th Amendment protection. Spears v. Robinson, 313 F. Supp. 52, 55, aff'd, 431 F.2d 1089

(8th Cir. 1970); Poirier v. Hodges, 445 F. Supp. at 842, and therefore, not within the scope of Section 1983's protection.

Not every claim of constitutional violation is a "civil right" under the statutes. Although some legal rights may be created by contract under State law, it is federal constitutional law that determines whether that interest rises to the level of a "legitimate claim of entitlement protected by the Due Process Clause." Memphis Light, Gas and Water Division v. Craft, 436 U.S. 1, 9 (1978). The Courts have repeatedly held that there is a distinction between contract interest and protectable property interest. McCormick v. Oklahoma City, 236 U.S. 657 (1915). Only where the breach of contract results in the loss tenured employment, has it been equated with the deprivation of a property interest. Brown v. Brienan, 722 F. 2d. 360, 363 (7th Cir. 1983). It is the legitimate expectation of continued employment, and not the contract itself, that is protected by due process.

Braden v. Texas A&M University System, 636 F. 2d. 90, 92-93 (5th Cir. 1981).

The contract which is the subject of the Petitioner's Complaint and allegations concerns a policy of insurance against negligence by her in her professional capacity. The policy of insurance in question does not constitute a property interest protected by the 14th Amendment, and therefore it is not within the scope of protection afforded by 42 U.S.C. Section 1983. Even though every contract may confer some legal rights under state law, that fact alone does not place the contract within federal due process protection. Physician's Serv. Med. Group v. San Bernardino City, 825 F. 2d. 1404, 1408 (9th Cir. 1987); Walentas v. Lipper, 862 F. 2d. 414, 418 (2nd Cir. 1988).

The conduct which the Petitioner asserts resulted in a constitutional depravation, if it constitutes a cause of action at all, is merely one for breach of contract. It should be noted that the contract in question is

between private parties, the Petitioner and St. Paul Fire & Marine Insurance Company. A simple breach of contract claim does not rise to the level of a constitutional deprivation. Medical Laundry Services v. Board of Trustees of the University of Alabama, 906 F. 2d. 571 (11th Cir. 1990).

Furthermore, Petitioner asserts that her demotion and transfer from the City Clinic to the City Jail constitutes a constitutional deprivation of a protected property or liberty interest. It is well settled that the internal transfer of an employee, without a change in status, is not constitute a loss of a tangible interest. Oladeinde v. City of Birmingham, 963 F.2d 1481 (11th Cir. 1992); Faucher v. Rodziewicz, 891 F.2d 864, 869 (11th Cir. 1990); Volk v. Coler, 845 F.2d 1422, 1430 7th Cir. 1988)

The Petitioner further asserted below that the conduct of the Respondents was in violation of Article I, Section 10 of the United States Constitution. Article I, Section 10 of the Constitution is an independent

obligation upon the states against enacting legislation that would impair legitimate contractual obligations. Therefore, Article I, Section 10 is not a cornerstone of the 14th Amendment as required under Mitchum v. Foster. See also, Poirier v. Hodges, 445 F. Supp. at 842. Furthermore, the alleged conduct asserted by the Petitioner below does not fall within the scope of prohibition against impairment of contracts as provided in Article I, Section 10 of the United States Constitution. The Petitioner alleges that individual conduct impaired her contractual obligations with St. Paul Fire & Marine Insurance Company. Article I, Section 10 of the Constitution is directed to the States and is not applicable to mere individual conduct by persons allegedly acting under the color of state law. Poirier, 445 F. Supp. 842.

IV. THE LOWER COURTS DID NOT ERR IN AWARDING PREVAILING PARTY STATUS TO THE RESPONDENTS

The statute in question, which provides for the awarding of costs, 42 U.S.C. 1988, provides in relevant part:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, ..., the court in its discretion, may allow the prevailing party, other than the United states, a reasonable attorney's fee as part of the costs.

Contrary to Petitioner's assertion, the order and judgment of the District Court was not the result of a private, unrecorded Rule 16(b) pre-trial planning conference. Rather, the dismissal was the result of briefs filed on behalf of all Respondents pursuant to a submission order entered by the District Court.

The cases cited by Petitioner are not applicable to the facts currently before the Court. The cases cited by

the Petitioner, specifically Farrar v. Hobby, 113 S.Ct. 556 (1992) refers to a Plaintiff's designation as a "prevailing party" when a plaintiff has actual relief on the merits. Id. at 573. Petitioner's insinuation that the Respondents' position in this case was a mere "moral satisfaction [that] results from any favorable statement of law" is incorrect. This Court in Farrar stated that there must a judgment, consent decree or settlement such as would alter the legal relationship between the parties in order to result in prevailing party status. A judgment has been entered in the case currently before the Court. However, although the Court of Appeals found that the Respondents were entitled to costs, the district court merely stated that the Respondents **may** be entitled to attorney fees under 42 U.S.C. [sec] 1988. No such determination has been made as of this date. The awarding of attorney fees is still currently before the district court and therefore, not a final determination for review by this Court. Therefore, the Petitioner's presentation of this issue to the Court is premature.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Donald N. Spurrier
Attorney for Respondents
Wikle, Thornton,
Holcombe & Associates
and James D. Thornton

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served upon the following by placing a copy of same in the United States mail, properly addressed and postage prepaid.

This the 9th day of July, 1993.

Cordelia Ann Bodie
1128 Hermitage Avenue
Huntsville, Al. 35801

Joe Campbell
P.O. Box 2087
Huntsville, AL 35804

Kerri Wilson Riley
P.O. Box 308
Huntsville, AL 35804

Donald N. Spurrier
Attorney for Respondents
Wikle, Thornton,
Holcombe & Associates
and James D. Thornton

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 92-6441
Non-Argument Calendar

D.C. Docket no. 92-N-103-NE

Cordelia Ann Bodie,

Plaintiff-Appellant

vs.

City of Huntsville, et al,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

Before ANDERSON, DUBINA and CARNES,
Circuit Judges.

PER CURIAM: (Entered March 3, 1993)

Appellant Cordelia Ann Bodie ("Bodie"), filed a pro se civil rights complaint under 42. U.S.C. 1983 in the United States District Court for the Northern District of Alabama alleging that the defendants conspired to violate her constitutional rights. The district court dismissed the complaint for failure to state a claim upon which relief could be granted.

Moreover, the district court held that Bodie's vague and conclusory allegations of conspiracy were insufficient to state federal constitutional claims.

Our review of the record persuades us that the district court was correct in dismissing Bodie's complaint. We have consistently held that mere conclusory allegations are insufficient to state a claim under 42 U.S.C. 1983, particularly for conspiracy claims. See Oladeinde v. City of Birmingham, 963 F.2d 1481, 1485-87 (11th Cir. 1992) (vague allegations, unsupported by specific facts, constitute no basis for a section 1983 action); Fullman v. Graddick, 739 F.2d 553, 556 (11th Cir. 1984) ("[i]n civil rights and conspiracy actions, . . . more than mere conclusory notice pleading is required."). Furthermore, absent a loss of pay or rank, there is no Fourteenth Amendment interest implicated by job transfer. See Oladeinde, 963 F.2d at 1486.

Bodie's claims of conspiracy lack the specificity required in civil rights actions and, in any event, she failed to allege how the defendants abridged her free speech rights or any other constitutional right.

For the foregoing reasons, we affirm the judgment of the

district court. [1]

AFFIRMED.

---

1. There is also pending in this cause the Appellees' motion to strike portions of appellant's brief which we deny as moot.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 92-6441
Non-Argument Calendar

D.C. Docket no. 92-N-103-NE

Cordelia Ann Bodie,

Plaintiff-Appellant

vs.

City of Huntsville, et al,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

Before ANDERSON, DUBINA and CARNES,
Circuit Judges.

JUDGMENT
(Entered March 3, 1993)

This cause came to be heard on the transcript of the record from the Untied States District Court for the Northern District of Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh

Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED;

It is further ordered that plaintiff-Appellant pay defendants Appellees the costs on appeal to be taxed by the Clerk of this Court.

For the Court: Miguel J. Cortez, Clerk
By: /s/ Deputy Clerk

Issue as Mandate April 26, 1993

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

NO. CV-92-N-0103-NE

Cordelia Ann Bodie,

Plaintiff,

vs.

City of Huntsville, et al,

Defendants.

ORDER OF DISMISSAL

(Entered April 22, 1992)

This civil action is before the court on motion of all the defendants to dismiss pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim upon which relief can be granted. The motions have been briefed and submitted for decision. After one complaint, one amended complaint and a proffered second amended complaint, the plaintiff has presented the court with nothing more than twenty pages of single spaced, typewritten, legal silliness. The motions to dismiss will be granted and the action will be dismissed.

According to the complaint, as last amended, the plaintiff, Cordelia Ann Bodie was employed by the City of Huntsville, Alabama, as City Nurse from May 19, 1976 until July 30, 1990, when she resigned her employment. She claims that the defendants conspired to create intolerable working conditions so as to deprive her of the right to employment with the City of Huntsville. The plaintiff recites a series of seemingly unrelated events that allegedly occurred over a period of approximately six years and concludes that she has been the victim of a conspiracy. Vague and conclusory allegations of conspiracy are insufficient as a matter of law to stated federal constitutional claims. Fullman v. Graddick, 739 F.2d 553 (IIth Cir. 1984).

Without recounting all the many details alleged by the plaintiff, it is sufficient to note that she fails to allege any violation of any federally protected right. Almost without exception, she recounts events having to do with the decision of the City of Huntsville to cease the operation of a City Clinic, of which she was director, and to transfer the functions of that clinic to a public hospital, defendant Healthcare Authority of Huntsville. She claims that she was forced to

resign her employment after she was transferred to the city jail because of intolerable working conditions but fails to allege facts which, if proven, would demonstrate that conditions were, in fact, intolerable. She does not claim that she filed any grievance concerning the alleged conditions at the jail. See, Gamer v. Wal-Mart Stores, Inc., 807 F.2d 1536 (11th Cir. 1987).

As noted at the Rule 16(b) conference in this case, the action, at least as to most defendants, is patently frivolous and may entitle them to an award of attorney fees under 42 U.S.C. [sec.] 1988.

This action is DISMISSED and costs are taxed against the plaintiff.

Done, this 22nd day of April, 1992.

/s/ Edwin L. Nelson
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 92-6441

CORDELIA ANN BODIE,

Plaintiff-Appellant

vs.

City of Huntsville, et al,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION FOR REHEARING

(Entered April 12, 1993)

Before: ANDERSON, DUBINA and CARNES, Circuit Judges.

PER CURIAM:

The Petition for rehearing filed by appellant Cordelia Ann Bodie is denied.

ENTERED FOR THE COURT:

/s/ Joel f. Dubina
United States Circuit Judge

(4)

SUPREME COURT, U.S.
FILED
AUG 9 1993
CLERK

No. 92-1968

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

CORDELIA ANN BODIE,
Petitioner,

v.

CITY OF HUNTSVILLE, et al.,
Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

KERRI JOHNSON RILEY
(Counsel of Record)
407 Franklin Street, SE
Huntsville, Alabama 35801
(205) 533-0800

Counsel for Respondents
City of Huntsville,
Ernest Kaufmann, Bill Kling,
James Putnam, Richard Showers
and James Wall, Jr.

MICHAEL L. FEES
WATSON, GAMMONS & FEES, P.C.
200 Clinton Avenue West,
Suite 800
Post Office Box 46
Huntsville, Alabama 35804
(205) 536-7423

Counsel for Respondents
Steve Hettinger and Richard Liles

GEORGE W. ROYER, JR.
SIROTE & PERMUTT, P.C.
1000 AmSouth Center
200 Clinton Avenue West
Post Office Box 18248
Huntsville, Alabama
35804-8248
(205) 536-1711

Counsel for Respondents
Errol Fitzpatrick,
Larry P. Hall
and Charles Perry

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QUESTIONS PRESENTED

Whether certiorari is due to be denied where the lower court cited a "heightened pleading requirement" for Section 1983 cases against municipalities as one basis for its opinion and the judgment is supported on other grounds.

Whether costs were properly taxed to the Petitioner when her lawsuit was dismissed for failure to state a claim and the dismissal was affirmed on appeal.

PARTIES

Cordelia Ann Bodie, Petitioner;

Errol Fitzpatrick, former Risk Manager, City of Huntsville, Alabama, Respondent;

Larry P. Hall, Benefits Analyst, Division of Insurance and Risk Management, City of Huntsville, Alabama, Respondent;

Jeff Hamilton, Employee of The Health Care Authority of the City of Huntsville, Alabama, Respondent;

Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital, Respondent;

Steve Hettinger, Mayor of the City of Huntsville, Alabama, Respondent;

City of Huntsville, a municipal corporation in the State of Alabama, Respondent;

Ernest Kaufmann, former Councilmember, City of Huntsville, Alabama, Respondent;

Bill Kling, Councilmember, City of Huntsville, Alabama, Respondent;

Richard Liles, Administrative Assistant to the Mayor of the City of Huntsville, Respondent;

Charles Perry, Director of Human Resources, City of Huntsville, Respondent;

James Putnam, Councilmember, City of Huntsville, Alabama, Respondent;

Richard Showers, Councilmember, City of Huntsville, Alabama, Respondent;

James D. Thornton, III, Respondent;

James Wall, Jr., Councilmember, City of Huntsville, Alabama, Respondent;

Wikle, Thornton, Holcombe and Associates, Inc., Respondent.

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No. 92-1968

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

CORDELIA ANN BODIE,
Petitioner,

v.

CITY OF HUNTSVILLE, et al.,
Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF OPINIONS BELOW

The opinion of the Eleventh Circuit affirming the district court's dismissal of the petitioner's action is unreported (App. A, *infra,* A1-A2). Also unreported are the district court's order dismissing the case (App. B, *infra,* A3-A4) and the Eleventh Circuit's order denying the petition for rehearing filed in that court (App. C, *infra,* A5).

STATEMENT OF JURISDICTION

The Court has discretionary jurisdiction to grant certiorari in this case pursuant to 28 U.S.C. § 1254(1). The Court of Appeals for the Eleventh Circuit entered its judgment in favor of the respondents and issued its opinion on March 3, 1993. The petitioner filed a petition for rehearing on March 22, 1993, and the petition was denied on April 12, 1993. The petitioner filed a petition for writ of certiorari in this Court on June 7, 1993.

STATUTES INVOLVED

42 U.S.C. § 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

On January 10, 1992, Petitioner Cordelia Ann Bodie, through her attorney of record, filed a complaint pursuant to 42 U.S.C. Section 1983 in the United States District Court for the Northern District of Alabama. (R.1-1-1). This complaint named fifteen separate defendants and contained four counts alleging violation of her civil rights. An amended complaint was filed on February 3, 1992, setting forth essentially the same factual averments and claims against the same defendants. (R.1-3-1).

In count one of her amended complaint, Petitioner alleges that the defendants conspired to deprive her of the employment of her choosing without due process and in violation of the Fourteenth Amendment. (R.1-3-9). Count two alleges that the defendants conspired to freeze out Petitioner from her employment at the city clinic by requiring her to work in an unsafe and unsanitary work environment, denying Petitioner equal protection of the laws guaranteed by the Fourteenth Amendment. (R.1-3-10-11). Count three alleges that the defendants conspired to compel Petitioner to leave her employment with the City of Huntsville in retaliation for her pursuit of her employee grievance in violation of her First Amendment Rights. (R.1-3-11). Count four alleges that the defendants conspired to interfere with and impair the value of a personal professional liability insurance policy held by the Petitioner in violation of Article I, Section 10, of the Constitution of the United States. (R.1-3-12).

Petitioner was formerly employed by the City of Huntsville as a registered nurse. (R.1-3-2). Respondents include the City of Huntsville, the City Councilmembers, the Mayor, the Mayor's Administrative Assistant, the City's Risk Manager and two successive City Personnel Directors. (R.1-3-3-4).

In her complaint, Petitioner avers generally that she initiated an employee grievance as to unsafe working conditions (R.1-3-6); that she appealed her grievance to the City Council and that a hearing was held (R. 1 - 3 - 7); that on January 11, 1990, the City Councilmembers disposed of her grievance by voting to approve a proposal for Respondent Huntsville Hospital to assume overall management of the city clinic and a nurse at the city jail and transfer Petitioner to the position of nurse at the city jail (R.1-3-8); that Respondent Perry presented Petitioner with a job description to become effective upon her transfer to the position of City Jail Nurse (R.1-3-8); that Perry refused to obtain a legal opinion of said job description (R.1-3-9); and that Petitioner resigned her employment as a result of Respondents' conduct.

(R.1-3-9). All other acts alleged by the petitioner occurred prior to January 10, 1990. (R.1-3-1-8). Nowhere in Petitioner's complaint does she claim that any alleged wrongful action was taken pursuant to a City policy or custom. (R.1-3-9-12).

All Defendants filed motions to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (R. 1-4,5,7,8,10). On February 12, 1992, the District Court entered an order setting out a briefing schedule for the Defendants' motions to dismiss. (R.1-9). On April 22, 1992, the District Court entered an order granting the motions to dismiss and taxing costs against Petitioner. (R.1-13-1-2).

Petitioner appealed to the Eleventh Circuit Court of Appeals on May 15, 1992. (R.1-19). On March 3, 1993, the Eleventh Circuit affirmed the dismissal of this action and ordered Petitioner to pay the costs on appeal. (App. D, *infra*, A6-A7). Petitioner filed a petition for rehearing on March 22, 1993, which was denied by the Eleventh Circuit on April 12, 1993. (App. C, *infra*, A-5).

SUMMARY OF THE ARGUMENT

The petition for writ of certiorari is due to be denied. The "heightened pleading requirement" disallowed in *Leatherman* for Section 1983 actions against municipal defendants was merely one reason cited by the Eleventh Circuit in affirming the dismissal of Petitioner's lawsuit. The petitioner failed, under a notice pleading standard, to state a claim against the municipal respondent or any other respondent.

The factual contentions in Petitioner's complaint demonstrate that the individual respondents are entitled to absolute legislative immunity and/or qualified immunity. Petitioner has also averred facts sufficient to demonstrate that this action is barred by the applicable statute of limitations. Thus, Petitioner has effectively pled herself out of court.

The routine assessment of costs against Petitioner by the lower courts was not error. Respondents are prevailing parties within the meaning of the Federal Rules of Civil Procedure and the Federal Rules of Appellant Procedure and the lower courts did not abuse their discretion in awarding costs to Respondents.

ARGUMENT

I. THE JUDGMENT REACHED BY THE ELEVENTH CIRCUIT IS CORRECT AND CRITICISM OF THE LEGAL REASONING IN THE OPINION BELOW IS AN INSUFFICIENT BASIS FOR REVIEW, THUS CERTIORARI IS DUE TO BE DENIED.

The Eleventh Circuit reached the correct result in affirming the opinion of the District Court which held that Petitioner failed to state a claim actionable under 42 U.S.C. Section 1983. Where the judgment rests on adequate grounds, the legal analysis in the lower court opinion does not merit review. See *Black v. Cutter Lab.*, 351 U.S. 292, 298 (1956).

The Eleventh Circuit cited a "heightened pleading requirement" in affirming the dismissal of Petitioner's lawsuit, since disallowed in civil rights actions brought against municipalities in *Leatherman v. Tarrant City Narcotics Unit*, 113 S. Ct. 1160 (1993). However, Petitioner has failed to state a cause of action under any standard of pleading because Petitioner's complaint does not allege the violation of a constitutionally protected right.

The lengthy recitation of facts in Petitioner's complaint also reveals the insufficiency of her case. Petitioner has pled facts which, when assumed true, prove on the face of her complaint that her claims against the respondents are barred by immunity and the statute of limitations. "...[A] plaintiff can plead himself out of court by unnecessarily alleging facts which demonstrate...that he has no legal claim." *Trevino v. Union Pacific R.R. Co.*, 916 F.2d 1230, 1234 (7th Cir. 1990). The judgment dismissing Petitioner's complaint is correct and certiorari is due to be denied.

A. Petitioner has failed to state a cognizable claim under 42 U.S.C. Section 1983.

Petitioner is required to give "fair notice of what [her] claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Petitioner's rambling, voluminous complaint fails to allege facts which demonstrate a constitutional injury.

A lengthy, confusing and conclusory complaint may be properly dismissed for failure to comply with Rule 8 of the Federal Rules of Civil Procedure requiring "short and plain" statements of claim. *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 415 (9th Cir.) *cert. denied*, 474 U.S. 1021 (1985). Petitioner's complaint, characterized by the District Court as twenty pages of "single spaced typewritten legal silliness", was correctly dismissed.

1. Petitioner's conclusory allegations of conspiracy are insufficient to state a cause of action.

Petitioner's complaint contains a lengthy and rambling recitation of unrelated factual contentions occurring over a period of six years. These allegations are followed by a statement that she has been the victim of a conspiracy by all of the various defendants. This type of "shotgun" litigation has been condemned by the courts. *Fullman v. Graddick*, 739 F.2d 553, 557 (11th Cir. 1984). "In conspiracy cases, a defendant must be informed of the nature of the conspiracy which is alleged." *Id.*

Petitioner has wholly failed, under a notice pleading standard, to allege facts which support her conclusion that she is the victim of a conspiracy. Her conspiracy claim is not maintainable under Section 1983.

2. Petitioner's claim that she was deprived of a safe working environment is not redressable under Section 1983.

This Court recently addressed the issue of safety in the work place as a constitutional violation in *Collins v. Harkers Heights*, 112 S.Ct. 1061 (1992). The Court considered and rejected broadening Section 1983 to encompass unsafe working environment claims. Petitioner's contention that she was not provided a safe working environment does not fall within the purview of a Section 1983 claim.

3. Petitioner has no constitutionally protected property interest to continued assignment at the city clinic.

Petitioner contends that she was constructively discharged as a result of the City Council's vote to transfer her from one nursing assignment to another. However, transfers and reassignments have generally not been held to implicate a property interest. See *Maples v. Martin*, 858 F.2d 1546, 1550 (11th Cir. 1988) (citations omitted). Petitioner's transfer without loss of pay or rank does not rise to the level of a constitutional wrong nor state a claim for relief under Section 1983.

4. Petitioner fails to state a claim for violation of her First Amendment rights.

The facts alleged in Petitioner's complaint do not form the basis for a First Amendment claim. The "speech" alleged by Petitioner in her complaint concerned her personal working conditions. Whether speech by an employee relates to a matter of public concern or is a matter of personal interest to the employee is a question of law to be determined by the Court. *Deremo v. Watkins*, 939 F.2d 908, 910 (11th Cir. 1991).

> [W]hen a public employee speaks not as a citizen upon matters of public concern, but instead as an employee upon

> matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior.

Connick v. Myers, 461 U.S. 138, 147 (1983).

Grievances by employees concerning personal working conditions do not constitute matters involving speech or matters of public concern. See *Ballard v. Blount*, 581 F.Supp. 160, 166 (N.D. Ga. 1983), *aff'd*, 734 F.2d 1480 (11th Cir.), *cert. denied*, 469 U.S. 1086 (1984). The speech for which Petitioner claimed she was retaliated against concerned matters of purely personal concern. Such speech is not constitutionally protected and Petitioner has no maintainable First Amendment claim.

5. Petitioner's claim of governmental impairment of a contractual relationship is outside the sphere of protection offered by Section 1983.

Petitioner's claim that various defendants conspired and acted in concert to interfere with a private contractual relationship was properly dismissed. The bar against governmental impairment of contractual obligations contained in Article I, Section 10 of the United States Constitution has never been incorporated into the sphere of the Fourteenth Amendment and is therefore not redressable under Section 1983. *Stone Mountain Game Ranch, Inc. v. Hunt*, 570 F. Supp. 238 (N.D. Ga. 1983), *aff'd*, 746 F.2d 761 (11th Cir. 1984).

6. Petitioner states no claim against the City of Huntsville.

A municipality can be found liable under Section 1983 only where the municipality itself causes the constitutional violation at issue. Respondeat superior or vicarious liability will not

attach. *Monell v. Dep't of Social Services*, 436 U.S. 658, 694-695 (1978). Petitioner does not claim that any allegedly wrongful act was done pursuant to policy or custom of the City. While *Leatherman* struck down a "heightened pleading requirement" for municipal defendants, it did not sanction the complete absence of any averment that the alleged wrongful conduct conformed to official policy or custom. The City of Huntsville and all of the "official capacity" claims were properly dismissed.

B. Petitioner's claims against Respondents are barred by the statute of limitations.

In an action under 42 U.S.C. Section 1983, the relevant statute of limitations is determined by a state's general or residual statute of limitations governing personal injury action. *Owens v. Okure*, 448 U.S. 235, 249-250 (1989). The general residual statute of limitations in Alabama provides a two year period for bringing personal injury actions. Ala. Code Section 6-2-38(1)(1975). *Foster v. Board of Sch. Comm'rs.*, 872 F.2d 1563, 1567 n. 4 (11th Cir. 1989). Virtually all of the allegedly wrongful acts complained of occurred prior to January 10, 1990. Petitioner's complaint was not filed until January 10, 1992.

Respondent Perry is alleged to have failed to obtain a legal opinion concerning Petitioner's proposed job description within the statute of limitations period. Assuming the truth of this claim, Petitioner has failed to allege a deprivation of a constitutionally protected right.

The only other act alleged by Petitioner to have occurred within two years of the filing of her complaint is the vote by the City Council to approve the proposal for Huntsville Hospital to assume overall management of the city clinic and a nurse at the city jail and to transfer plaintiff to the position of nurse at the city jail. An internal transfer does not implicate a property interest, thus this claim also fails to allege an unconstitutional deprivation. On the face of her complaint, all other claims alleged by Petitioner are barred by the statute of limitations.

C. The individual respondents are entitled to immunity from suit.

The facts alleged by Petitioner show that the individual respondents are entitled to absolute or qualified immunity from suit. Petitioner has alleged no facts sufficient to overcome a defense of immunity.

1. Respondent City Councilmembers are entitled to absolute legislative immunity in the exercise of legislative decision-making.

The City Councilmembers, as municipal legislators, are absolutely immune from suit under Section 1983 for acts arising out of their legislative activity. See *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391, 405 (1979). The vote of the City Councilmembers constitutes an exercise of legislative decision-making. See *Espanola Way Corp. v. Myerson*, 690 F.2d 827, 829 (11th Cir. 1982), *cert. denied*, 460 U.S. 1039 (1983).

A City Council vote to contract with an outside agency for city services is an action taken in its legislative capacity, thus the Councilmembers are immune from Section 1983 personal liability. *Healy v. Town of Pembroke Park*, 831 F.2d 989, 993 (11th Cir. 1987). Under the facts alleged, the City Council was acting in a legislative capacity in its vote on January 11, 1990, and the Councilmembers are thus immune from Section 1983 liability.

2. Qualified immunity protects the individual respondents from suit.

Once a claim of qualified immunity is raised, the first inquiry in examining the claim is whether the plaintiff has alleged a clearly established constitutional right. *Siegert v. Gilley*, 111 S.Ct. 1789, 1793 (1991). Under this analysis, "[a] necessary concomitant to determination of whether the constitutional right asserted by the plaintiff is clearly established at the time the

defendant acted is the determination of whether the plaintiff has asserted a violation of a constitutional right at all." *Id.* Petitioner has failed to assert the violation of any constitutional right.

The contours of the right must also be sufficiently defined so that a reasonable person would understand that he is violating that right. *Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Here Petitioner has failed to allege any act or omission which could be construed to be a violation of "clearly established" constitutional law. The individual respondents are entitled to qualified immunity.

II. THE LOWER COURTS DID NOT ERR IN AWARDING COSTS TO RESPONDENTS AS PREVAILING PARTIES.

Petitioner contests the routine taxing of costs against her although her lawsuit was properly dismissed and the dismissal was affirmed on appeal. Rule 54(d) of the Federal Rules of Civil Procedure directs that "...costs shall be allowed as of course to the prevailing party unless the court otherwise directs...." Rule 39(a) of the Federal Rules of Appellate Procedure provides that "...if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered...." Prevailing parties are generally entitled to costs of litigation. *Kentucky v. Graham*, 473 U.S. 159, 164 (1985). A favorable ruling on a motion to dismiss is tantamount to a judgment on the merits and entitles defendants to an award of costs as the prevailing party. *Burda v. M. Ecker Co.*, 954 F.2d 434, 440 n.9 (7th Cir. 1992).

The cases cited by Petitioner are inapposite in that they concern the award of attorney's fees pursuant to 42 U.S.C. 1988. The lower courts properly exercised their discretion to award costs to the respondents.

CONCLUSION

For the reasons set forth herein, the petition for writ of certiorari should be denied.

Respectfully submitted,

Kerri Johnson Riley
(Counsel of Record)
407 Franklin Street, SE
Huntsville, Alabama 35801
(205) 533-0800

Counsel for Respondents
City of Huntsville,
Ernest Kaufmann, Bill Kling,
James Putnam, Richard Showers
and James Wall, Jr.

Michael L. Fees
Watson, Gammons & Fees, P.C.
200 Clinton Avenue West, Suite 800
Post Office Box 46
Huntsville, Alabama 35804
(205) 536-7423

Counsel for Respondents
Steve Hettinger and Richard Liles

George W. Royer, Jr.
Sirote & Permutt, P.C.
1000 AmSouth Center
200 Clinton Avenue West
Post Office Box 18248
Huntsville, Alabama 35804-8248
(205) 536-1711

Counsel for Respondents
Errol Fitzpatrick, Larry P. Hall
and Charles Perry

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441
Non-Argument Calendar

D.C. Docket No. 92-N-103

CORDELIA ANN BODIE,
Plaintiff-Appellant,

versus

CITY OF HUNTSVILLE;
WIKLE, THORNTON, HOLCOMBE & ASSOCIATES, INC.;
HEALTHCARE AUTHORITY,
THE CITY OF HUNTSVILLE, dba Huntsville Hospital;
STEVE HETTINGER; ERNEST KAUFMAN;
BILL KLING, JR.; JAMES PUTNAM;
RICHARD SHOWERS; JAMES WALL, JR.;
ERROLL FITZPATRICK; LARRY P. HALL;
RICHARD LILES; CHARLES PERRY; JEFF HAMILTON;
JAMES D. THORNTON, III,
Defendants-Appellees.

Appeal from the United States District
for the Northern District of Alabama

(March 3, 1993)

Before ANDERSON, DUBINA and CARNES, Circuit Judges.

PER CURIAM:

Appellant Cordelia Ann Bodie ("Bodie"), filed a pro se civil rights complaint under 42 U.S.C. § 1983 in the United States District Court for the Northern District of Alabama alleging that

the defendants conspired to violate her constitutional rights. The district court dismissed the complaint for failure to state a claim upon which relief could be granted. Moreover, the district court held that Bodie's vague and conclusory allegations of conspiracy were insufficient to state federal constitutional claims.

Our review of the record persuades us that the district court was correct in dismissing Bodie's complaint. We have consistently held that mere conclusory allegations are insufficient to state a claim under 42 U.S.C. § 1983, particularly for conspiracy claims. *See Oladeinde v. City of Birmingham*, 963 F.2d 1481, 1485087 (11th Cir. 1992) (vague allegations, unsupported by specific facts, constitute no basis for a section 1983 action); *Fullman v. Graddick*, 739 F.2d 553, 556 (11th Cir. 1984) ("[i]n civil rights and conspiracy action,... more than mere conclusory, notice pleading is required"). Furthermore, absent a loss of pay or rank, there is no Fourteenth Amendment interest implicated by job transfer. *See Oladeinde*, 963 F.2d at 1486.

Bodie's claims of conspiracy lack the specificity required in civil rights actions and, in any event, she failed to allege how the defendants abridged her free speech rights or any other constitutional right.

For the foregoing reasons, we affirm the judgment of the district court.[1]

AFFIRMED.

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[1] There is also pending in this cause the appellees' motions to strike portions of appellant's brief which we deny as moot.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

CV-92-N-0103-NE

CORDELIA ANN BODIE,
Plaintiff,

vs.

CITY OF HUNTSVILLE, et al.,
Defendants.

Order of Dismissal

This civil action is before the court on motion of all the defendants to dismiss pursuant to Rule 12(b)(6), Fed.R.Civ.P., for failure to state a claim upon which relief can be granted. The motions have been briefed and submitted for decision. After one complaint, one amended complaint and a proffered second amended complaint, the plaintiff has presented the court with nothing more than twenty pages of single spaced, typewritten, legal silliness. The motions to dismiss will be granted and the action will be dismissed.

According to the complaint, as last amended, the plaintiff Cordelia Ann Bodie was employed by the City of Huntsville, Alabama, as City Nurse from May 19, 1976, until July 30, 1990, when she resigned her employment. She claims that the defendants conspired to create intc erable working conditions so as to deprive her of the right to employment with the City of Huntsville. The plaintiff recites a series of seemingly unrelated events that allegedly occurred over a period of approximately six years and concludes that she has been the victim of a conspiracy. Vague and conclusory allegations of conspiracy are insufficient

as a matter of law to state federal constitutional claims. *Fullman v. Graddick*, 739 F.2d 553 (11th Cir. 1984).

Without recounting all the many details alleged by the plaintiff, it is sufficient to note that she fails to allege any violation of any federally protected right. Almost without exception, she recounts events having to do with the decision of the City of Huntsville to cease the operation of a City Clinic, of which she was director, and to transfer the functions of that clinic to a public hospital, defendant Healthcare Authority of Huntsville. She claims that she was forced to resign her employment after she was transferred to the city jail because of intolerable working conditions but fails to allege facts which, if proven, would demonstrate that conditions were, in fact, intolerable. She does not claim that she filed any grievance concerning the alleged conditions at the jail. *See, Garner v. Wal-Mart Stores, Inc.*, 807 F.2d 1536 (11th Cir. 1987).

As noted at the Rule 16(b) conference in this case, the action, at least as to most defendants, is patently frivolous and may entitle them to an award of attorney fees under 42 U.S.C. § 1988.

The action is **DISMISSED** and costs are taxed against the plaintiff.

Done, this 22nd of April, 1992.

/s/Edwin L. Nelson
EDWIN L. NELSON
UNITED STATES
DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 92-6441

CORDELIA ANN BODIE,
Plaintiff-Appellant,

versus

CITY OF HUNTSVILLE; WIKLE, THORNTON, HOLCOMBE & ASSOCIATES, INC.; HEALTHCARE AUTHORITY, THE CITY OF HUNTSVILLE, dba Huntsville Hospital; STEVE HETTINGER; ERNEST KAUFMAN; BILL KLING, JR.; JAMES PUTNAM; RICHARD SHOWERS; JAMES WALL, JR.; ERROLL FITZPATRICK; LARRY P. HALL; RICHARD LILES; CHARLES PERRY; JEFF HAMILTON; JAMES D. THORNTON, III,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION FOR REHEARING

BEFORE: ANDERSON, DUBINA, and CARNES, Circuit Judges.

PER CURIAM:

The petition for rehearing filed by appellant Cordelia Ann Bodie is denied.

ENTERED FOR THE COURT:
/s/ JOEL F. DUBINA
United States Circuit Judge
April 12, 1993

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 92-6441
Non-Argument Calendar

D.C. Docket no. 92-N-103-NE

CORDELIA ANN BODIE,
Plaintiff-Appellant,

versus

CITY OF HUNTSVILLE; WIKLE, THORNTON, HOLCOMBE & ASSOCIATES, INC.; HEALTHCARE AUTHORITY, THE CITY OF HUNTSVILLE, dba Huntsville Hospital; STEVE HETTINGER; ERNEST KAUFMAN; BILL KLING, JR.; JAMES PUTNAM; RICHARD SHOWERS; JAMES WALL, JR.; ERROLL FITZPATRICK; LARRY P. HALL; RICHARD LILES; CHARLES PERRY; JEFF HAMILTON; JAMES D. THORNTON, III,
Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

Before ANDERSON, DUBINA and CARNES,
Circuit Judges.

JUDGMENT

[Entered: March 3, 1993]

This cause came to be heard on the transcript of the record from the United States District Court for the Northern District of

Alabama, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby AFFIRMED:

It is further ordered that plaintiff-Appellant pay defendants Appellees the costs on appeal to be taxed by the Clerk of this Court.

For the Court: Miguel J. Cortez,

By: /s/ Karleen McNabb
Deputy Clerk

Issue as Mandate April 26, 1993